



UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 27 2005

Director's Office  
Office of Patent Publication

MCDERMOTT WILL & EMERY LLP  
600 13TH STREET, N.W.  
WASHINGTON DC 20005-3096

In re Application of :  
MIDDELBERG, NEAL J., et al. :  
Application No. 10/034,853 : **DECISION ON PETITION**  
Filed: December 28, 2001 :  
Attorney Docket No. 1174/117/2 :

This is a decision on the Petition Under 37 C.F.R. § 1.181 To Withdraw Abandonment, received in the United States Patent and Trademark Office (USPTO) on June 20, 2005.

The petition is **DISMISSED**.

The patent application was held abandoned for the Applicant's failure to a proper reply to the Office letter — Notice Regarding Drawings — mailed on December 2, 2004. The Notice of Abandonment was mailed April 18, 2005.

Petitioner states that the Notice Regarding Drawings indicated that Figure 6B was missing from the application and need to be submitted. However, a Preliminary Amendment with Figure 6B was submitted on September 25, 2003. Also, that upon receiving the Notice Regarding Drawings, Applicants were [allegedly] advised by the USPTO on December 9, 2004 that Figure 6B had been matched up with the file. The Applicant requests withdrawal of the Notice of Abandonment.

A review of the patent application file reveals no presence of Figure 6B. Subsequently the Office mailed on December 2, 2004 the Notice Regarding Drawings and an attached Notice Of Draftsperson's Patent Drawing Review, Form PTO-948, indicating that Fig. 6B was missing. The Applicant was given a two-month time period to correct the informalities Notice Regarding Drawings noted in the PTO-948.

In regards to the alleged advise by the USPTO, the applicant should have confronted this situation by a timely reply in writing (see 37 CFR § 1.2)

**37 CFR 1.2 Business to be transacted in writing states in part the following:**

**All business with the Patent and Trademark Office should be transacted in writing.**

.... **The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is a disagreement or doubt.**

Petitioner should seek relief by the filing a Petition to Revive An Abandoned Application under 37 CFR § 1.137.

■ Under 37 CFR 1.137(a), a petition for the revival of an *unavoidably* abandoned application must include the following:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee set forth in § 1.17(l);
- (3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and pursuant to paragraph (d) of this section.

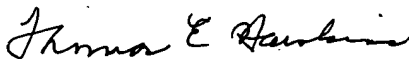
■ Under 37 CFR 1.137(b), a petition for the revival of an *unintentionally* abandoned application must be:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (d) of this section.

Telephone inquires relating to the filing of the Petition under 37 CFR 1.137 should be directed to the Office of Petitions at 703-305-9282 or further correspondence with respect to this matter should be addressed as follows:

*By mail:*                      Mail Stop Petitions  
   Commissioner for Patents  
   P O Box 1450  
   Alexandria, VA 22313-1450

Telephone inquires relating to this decision may be directed to the undersigned at 703-305-8380.



Thomas E. Hawkins  
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Office of the Director  
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